

1                                   A bill to be entitled  
2           An act relating to workers' compensation;  
3           clarifying the legislative intent that the  
4           terms "net premiums written" and "net premiums  
5           collected" as used in ch. 440, F.S., include  
6           ceded reinsurance premiums in accord with  
7           original intent; amending s. 440.49, F.S.,  
8           relating to the assessment for the Special  
9           Disability Trust Fund; amending s. 440.51,  
10          F.S., relating to the assessment for the  
11          Workers' Compensation Administration Trust Fund  
12          and to expenses of administration; prescribing  
13          effect of deductions with respect to  
14          retaliatory taxes; reducing the assessment rate  
15          for calendar year 2001; creating a Task Force  
16          on Workers' Compensation Administration to  
17          study the way in which the workers'  
18          compensation system is funded and administered;  
19          amending s. 440.38, F.S.; revising certain  
20          requirements relating to self-insurers;  
21          providing an effective date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25           Section 1. Legislative intent.--It is the intent of  
26 the Legislature to clarify that the terms "net premiums  
27 written" and "net premiums collected" as used in chapter 440,  
28 Florida Statutes, have meant and continue to mean premiums  
29 arising from workers' compensation policies issued by an  
30 insurer in this state as the primary insurance carrier without  
31 deduction for ceded reinsurance premiums transferred to an

1 insurance company for reinsurance purchased or any premium  
2 expense attributable to purchasing reinsurance.

3 Section 2. Paragraph (b) of subsection (9) of section  
4 440.49, Florida Statutes, is amended to read:

5 440.49 Limitation of liability for subsequent injury  
6 through Special Disability Trust Fund.--

7 (9) SPECIAL DISABILITY TRUST FUND.--

8 (b)1. The Special Disability Trust Fund shall be  
9 maintained by annual assessments upon the insurance companies  
10 writing compensation insurance in the state, the commercial  
11 self-insurers under ss. 624.462 and 624.4621, the assessable  
12 mutuals under s. 628.601, and the self-insurers under this  
13 chapter, which assessments shall become due and be paid  
14 quarterly at the same time and in addition to the assessments  
15 provided in s. 440.51. The division shall estimate annually in  
16 advance the amount necessary for the administration of this  
17 subsection and the maintenance of this fund and shall make  
18 such assessment in the manner hereinafter provided.

19 2. The annual assessment shall be calculated to  
20 produce during the ensuing fiscal year an amount which, when  
21 combined with that part of the balance in the fund on June 30  
22 of the current fiscal year which is in excess of \$100,000, is  
23 equal to the average of:

24 a. The sum of disbursements from the fund during the  
25 immediate past 3 calendar years, and

26 b. Two times the disbursements of the most recent  
27 calendar year.

28  
29 Such amount shall be prorated among the insurance companies  
30 writing compensation insurance in the state and the  
31 self-insurers. Provided however, for those carriers that have

1 excluded ceded reinsurance premiums from their assessments on  
2 or before January 1, 2000, no assessments on ceded reinsurance  
3 premiums shall be paid by those carriers until such time as  
4 the division advises each of those carriers of the impact that  
5 the inclusion of ceded reinsurance premiums has on their  
6 assessment. The division may not recover any past  
7 underpayments of assessments levied against any carrier that  
8 on or before January 1, 2000, excluded ceded reinsurance  
9 premiums from their assessment prior to the point that the  
10 division advises of the appropriate assessment that should  
11 have been paid.

12           3. The net premiums written by the companies for  
13 workers' compensation in this state and the net premium  
14 written applicable to the self-insurers in this state are the  
15 basis for computing the amount to be assessed as a percentage  
16 of net premiums. Such payments shall be made by each carrier  
17 ~~insurance company~~ and self-insurer to the division for the  
18 Special Disability Trust Fund in accordance with such  
19 regulations as the division prescribes.

20           4. The Treasurer is authorized to receive and credit  
21 to such Special Disability Trust Fund any sum or sums that may  
22 at any time be contributed to the state by the United States  
23 under any Act of Congress, or otherwise, to which the state  
24 may be or become entitled by reason of any payments made out  
25 of such fund.

26           Section 3. Subsections (1), (2), (3), and (5) of  
27 section 440.51, Florida Statutes, are amended to read:

28           440.51 Expenses of administration.--

29           (1) The division shall estimate annually in advance  
30 the amounts necessary for the administration of this chapter,  
31 in the following manner.

1           (a) The division shall, by July 1 of ~~as soon as~~  
2 ~~practicable after July 1~~ in each year, notify carriers and  
3 self-insurers of the assessment rate, which shall be based on  
4 ~~determine the~~ anticipated expenses ~~expense of the~~  
5 administration of this chapter for the next calendar ~~preceding~~  
6 ~~fiscal~~ year. Such assessment rate shall take effect January 1  
7 of the next calendar year and shall be included in workers'  
8 compensation rate filings approved by the Department of  
9 Insurance which become effective on or after January 1 of the  
10 next calendar year. Assessments shall become due and be paid  
11 quarterly. ~~The expense of administration for such preceding~~  
12 ~~fiscal year shall be used as the basis for determining the~~  
13 ~~amount to be assessed against each carrier in order to provide~~  
14 ~~for the expenses of the administration of this chapter for the~~  
15 ~~current fiscal year.~~

16           (b) The total expenses of administration shall be  
17 prorated among the carriers ~~insurance companies~~ writing  
18 compensation insurance in the state and self-insurers. The  
19 net premiums collected by carriers ~~the companies~~ and the  
20 amount of premiums calculated by the division for self-insured  
21 employers ~~a self-insurer would have to pay if insured~~ are the  
22 basis for computing the amount to be assessed. When reporting  
23 deductible policy premium for purposes of computing  
24 assessments levied after July 1, 2001, full policy premium  
25 value must be reported prior to application of deductible  
26 discounts or credits. This amount may be assessed as a  
27 specific amount or as a percentage of net premiums payable as  
28 the division may direct, provided such amount so assessed  
29 shall not exceed 2.75 ~~4~~ percent, beginning January 1, 2001,  
30 except during the interim period from July 1, 2000, through  
31 December 31, 2000, such assessments shall not exceed 4 percent

1 of such net premiums. The carriers ~~insurance companies~~ may  
2 elect to make the payments required under s. 440.15(1)(f)~~s.~~  
3 ~~440.15(1)(e)~~ rather than having these payments made by the  
4 division. In that event, such payments will be credited to  
5 the carriers ~~insurance companies~~, and the amount due by the  
6 carrier ~~insurance company~~ under this section will be reduced  
7 accordingly.

8 (2) The division shall provide by regulation for the  
9 collection of the amounts assessed against each carrier. Such  
10 amounts shall be paid within 30 days from the date that notice  
11 is served upon such carrier. If such amounts are not paid  
12 within such period, there may be assessed for each 30 days the  
13 amount so assessed remains unpaid, a civil penalty equal to 10  
14 percent of the amount so unpaid, which shall be collected at  
15 the same time and a part of the amount assessed. For those  
16 carriers who excluded ceded reinsurance premiums from their  
17 assessments prior to January 1, 2000, the division shall not  
18 recover any past underpayments of assessments related to ceded  
19 reinsurance premiums prior to January 1, 2001, against such  
20 carriers.

21 (3) If any carrier fails to pay the amounts assessed  
22 against him or her under the provisions of this section within  
23 60 days from the time such notice is served upon him or her,  
24 the Department of Insurance upon being advised by the division  
25 may suspend or revoke the authorization to insure compensation  
26 in accordance with the procedure in s. 440.38(3)(a). The  
27 division may permit a carrier to remit any underpayment of  
28 assessments for assessments levied after January 1, 2001.

29 (5) Any amount so assessed against and paid by an  
30 insurance carrier, self-insurer authorized pursuant to s.  
31 440.57, or commercial self-insurance fund authorized under ss.

1 624.460-624.488 shall be allowed as a deduction against the  
2 amount of any other tax levied by the state upon the premiums,  
3 assessments, or deposits for workers' compensation insurance  
4 on contracts or policies of said insurance carrier,  
5 self-insurer, or commercial self-insurance fund. Any insurance  
6 carrier claiming such a deduction against the amount of any  
7 such tax shall not be required to pay any additional  
8 retaliatory tax levied pursuant to s. 624.5091 as a result of  
9 claiming such deduction. Because deductions under this  
10 paragraph are available to insurance carriers, s. 624.5091  
11 does not limit such deductions in any manner.

12 Section 4. (1) Effective upon this act becoming a  
13 law, there is created the Task Force on Workers' Compensation  
14 Administration for the purpose of examining the way in which  
15 the workers' compensation system is funded and administered.  
16 The Task Force shall consist of seven members appointed as  
17 follows: three members appointed by the Governor, one of whom  
18 shall serve as chair; two members appointed by the President  
19 of the Senate, and two members appointed by the Speaker of the  
20 House of Representatives. Appointments shall be made no later  
21 than July 1, 2000.

22 (2) The Task Force shall submit recommendations to the  
23 Governor, the President of the Senate, and the Speaker of the  
24 House of Representatives by January 15, 2001 concerning:

25 (a) Whether the administration of the workers'  
26 compensation system should be funded through assessments,  
27 general revenue, or some other source, and to what extent.

28 (b) How the funds should be used to accomplish the  
29 goal of administering the workers' compensation system in the  
30 most cost-effective manner.

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1           (c) What services, functions, or entities, including  
2 the Workers' Compensation Oversight Board, should be funded as  
3 part of the administration of the workers' compensation  
4 system.

5           (d) What services and functions, including workplace  
6 safety, if any, should be housed within the Division of  
7 Workers' Compensation.

8           (e) What cost savings could be achieved in the  
9 administration of the workers' compensation system, including  
10 the operations of the Division of Workers' Compensation.

11           (f) What organizational changes affecting the  
12 administration of the workers' compensation system, if any,  
13 should be made to make it more efficient.

14           (3) To assist the task force in its work, the  
15 Executive Office of the Governor shall contract for the  
16 completion of a budgetary and operational analysis of the  
17 Division of Workers' Compensation, detailing the staffing of  
18 the division, receipt and expenditure of revenues,  
19 reliability of financial records and reports, and the  
20 efficiency of internal controls and procedures. The Executive  
21 Office of the Governor shall arrange for the study to be  
22 completed and transmitted to the task force by September 1,  
23 2000.

24           (4) The sum of \$250,000 is appropriated from the  
25 Workers' Compensation Administration Trust Fund to the  
26 Executive Office of the Governor for the purpose of funding  
27 the study required in subsection (3).

28           Section 5. If any provision of this act or its  
29 application to any person or circumstance is held invalid, the  
30 invalidity does not affect other provisions or applications of  
31 the act which can be given effect without the invalid

1 provision or application, and to this end the provisions of  
2 this act are severable.

3 Section 6. Paragraph (b) of subsection (1) of section  
4 440.38, Florida Statutes, is amended to read:

5 440.38 Security for compensation; insurance carriers  
6 and self-insurers.--

7 (1) Every employer shall secure the payment of  
8 compensation under this chapter:

9 (b) By furnishing satisfactory proof to the division  
10 of its ~~her or his~~ financial ability to pay such compensation  
11 individually and on behalf of its subsidiary and affiliated  
12 companies with employees in this state and receiving an  
13 authorization from the division to pay such compensation  
14 directly in accordance with the following provisions:

15 1. The division may, as a condition to such  
16 authorization, require such employer to deposit in a  
17 depository designated by the division either an indemnity bond  
18 or securities, at the option of the employer, of a kind and in  
19 an amount determined by the division and subject to such  
20 conditions as the division may prescribe, which shall include  
21 authorization to the division in the case of default to sell  
22 any such securities sufficient to pay compensation awards or  
23 to bring suit upon such bonds, to procure prompt payment of  
24 compensation under this chapter. In addition, the division  
25 shall require, as a condition to authorization to self-insure,  
26 proof that the employer has provided for competent personnel  
27 with whom to deliver benefits and to provide a safe working  
28 environment. Further, the division shall require such  
29 employer to carry reinsurance at levels that will ensure the  
30 actuarial soundness of such employer in accordance with rules  
31 promulgated by the division. The division may by rule require



1 that, in the event of an individual self-insurer's insolvency,  
2 such indemnity bonds, securities, and reinsurance policies  
3 shall be payable to the Florida Self-Insurers Guaranty  
4 Association, Incorporated, created pursuant to s. 440.385.  
5 Any employer securing compensation in accordance with the  
6 provisions of this paragraph shall be known as a self-insurer  
7 and shall be classed as a carrier of her or his own insurance.

8         2. If the employer fails to maintain the foregoing  
9 requirements, the division shall revoke the employer's  
10 authority to self-insure, unless the employer provides to the  
11 division the certified opinion of an independent actuary who  
12 is a member of the American Society of Actuaries as to the  
13 actuarial present value of the employer's determined and  
14 estimated future compensation payments based on cash reserves,  
15 using a 4-percent discount rate, and a qualifying security  
16 deposit equal to 1.5 times the value so certified. The  
17 employer shall thereafter annually provide such a certified  
18 opinion until such time as the employer meets the requirements  
19 of subparagraph 1. The qualifying security deposit shall be  
20 adjusted at the time of each such annual report. Upon the  
21 failure of the employer to timely provide such opinion or to  
22 timely provide a security deposit in an amount equal to 1.5  
23 times the value certified in the latest opinion, the division  
24 shall then revoke such employer's authorization to  
25 self-insure, and such failure shall be deemed to constitute an  
26 immediate serious danger to the public health, safety, or  
27 welfare sufficient to justify the summary suspension of the  
28 employer's authorization to self-insure pursuant to s. 120.68.

29         3. Upon the suspension or revocation of the employer's  
30 authorization to self-insure, the employer shall provide to  
31 the division and to the Florida Self-Insurers Guaranty

1 Association, Incorporated, created pursuant to s. 440.385 the  
2 certified opinion of an independent actuary who is a member of  
3 the American Society of Actuaries of the actuarial present  
4 value of the determined and estimated future compensation  
5 payments of the employer for claims incurred while the member  
6 exercised the privilege of self-insurance, using a discount  
7 rate of 4 percent. The employer shall provide such an opinion  
8 at 6-month intervals thereafter until such time as the latest  
9 opinion shows no remaining value of claims. With each such  
10 opinion, the employer shall deposit with the division a  
11 qualifying security deposit in an amount equal to the value  
12 certified by the actuary. The association has a cause of  
13 action against an employer, and against any successor of the  
14 employer, who fails to timely provide such opinion or who  
15 fails to timely maintain the required security deposit with  
16 the division. The association shall recover a judgment in the  
17 amount of the actuarial present value of the determined and  
18 estimated future compensation payments of the employer for  
19 claims incurred while the employer exercised the privilege of  
20 self-insurance, together with attorney's fees. For purposes  
21 of this section, the successor of an employer means any  
22 person, business entity, or group of persons or business  
23 entities, which holds or acquires legal or beneficial title to  
24 the majority of the assets or the majority of the shares of  
25 the employer.

26 4. A qualifying security deposit shall consist, at the  
27 option of the employer, of:

28 a. Surety bonds, in a form and containing such terms  
29 as prescribed by the division, issued by a corporation surety  
30 authorized to transact surety business by the Department of  
31 Insurance, and whose policyholders' and financial ratings, as

1 reported in A.M. Best's Insurance Reports, Property-Liability,  
2 are not less than "A" and "V", respectively.

3 b. Certificates of deposit with financial  
4 institutions, the deposits of which are insured through the  
5 Federal Deposit Insurance Corporation or the Federal Savings  
6 and Loan Insurance Corporation.

7 c. Irrevocable letters of credit in favor of the  
8 division issued by financial institutions described in  
9 sub-subparagraph b.

10 d. Direct obligations of the United States Treasury  
11 backed by the full faith and credit of the United States.

12 e. Securities issued by this state and backed by the  
13 full faith and credit of this state.

14 5. The qualifying security deposit shall be held by  
15 the division, or by a depository authorized by the division,  
16 exclusively for the benefit of workers' compensation  
17 claimants. The security shall not be subject to assignment,  
18 execution, attachment, or any legal process whatsoever, except  
19 as necessary to guarantee the payment of compensation under  
20 this chapter. No surety bond may be terminated, and no other  
21 qualifying security may be allowed to lapse, without 90 days'  
22 prior notice to the division and deposit by the self-insuring  
23 employer of other qualifying security of equal value within 10  
24 business days after such notice. Failure to provide such  
25 notice or failure to timely provide qualifying replacement  
26 security after such notice shall constitute grounds for the  
27 division to call or sue upon the surety bond, or to act with  
28 respect to other pledged security in any manner necessary to  
29 preserve its value for the purposes intended by this section,  
30 including the exercise of rights under a letter of credit, the  
31 sale of any security at then prevailing market rates, or the

1 withdrawal of any funds represented by any certificate of  
2 deposit forming part of the qualifying security deposit;

3           Section 7. Except as otherwise expressly provided in  
4 this act, this act shall take effect July 1, 2000.

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